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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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JUN 24 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of )  
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Petition of Southwestern Bell Telephone Company, )  
Pacific Bell and Nevada Bell for Relief from Barriers )  
to Deployment of Advanced Telecommunications Services )  
\_\_\_\_\_ )

CC Docket No. 98-91

**COMMENTS OF**  
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## Summary

ICG maintains that the Commission must stand by the commitment to make local competition work, in accordance with the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”). The Commission should not be taken in by proposals from the RBOCs that would result in the diversion of energy and resources from achieving local competition, a goal that will benefit all Americans, in favor of allowing the RBOCs to pursue their own profit-maximizing agendas.

In these comments, ICG demonstrates for the Commission the many local competition tasks that remain undone by the SBC LECs. ICG describes in detail many of the areas in which the SBC LECs are woefully short of meeting their claims that they support competition: collocation procedures; operations support systems; resale service; number portability issues; directory assistance; interconnection and service provisioning; misleading public information; and consistent legal delays. The cumulative effect of ICG’s experience with the SBC LECs, as well as the experiences of other CLECs, demonstrates a thorough lack of commitment by the SBC LECs in meeting their responsibilities mandated by the Act. All of the existing problems must be cured, as is required by the Act, before the SBC LECs focus on fattening their corporate bottom line at the expense of measurable local competition.

Given the SBC LECs’ consistent inability to meet the requirements of Section 251 and 252, whether intentional or not, the SBC LECs should not be permitted to divert their energy, capital, and other resources to new projects, such as those outlined in their petition.

As the Commission well knows, and the RBOCs would likely agree, a carrier has only a finite supply of energy and resources available to it. It is axiomatic that any expenditure of resources on any business plan necessarily drains resources from other tasks to be done. Therefore, devotion of any energy and resources by SBC in focusing on the provision of ADSL services will lessen the energy and resources necessary to carry out the SBC LECs' local competition obligations under the Act. Because SBC's energy and resources are finite, the SBC LECs' petition for Section 706 "relief," which seemingly concerns other issues, is highly relevant to the future of local competition in SBC's regions. In simple, straightforward terms, the SBC LECs must do what the law requires before proceeding to other energy-and-resource-diverting projects.

It is also inconsistent with public policy for the Commission to consider SBC LECs' request for relief at this time. Of particular concern to ICG is the discussion by the SBC LECs of all of the services that they would like to provide to their customers, if only the Commission would grant the relief the SBC LECs request. It seems likely from the SBC LECs' pleading that the SBC LECs are currently in the position, or very soon will be, to offer to their customers all of the ADSL services it discusses. Although the SBC LECs have not gone so far as to state that such services could be provided "now," and will doubtlessly argue that a number of "technical considerations" need to be worked out, it appears that the "relief" the SBC LECs seek is simply insulation of services from the requirements of Sections 251 and 252 competitors before the SBC LECs take the final steps to bring their ADSL services to the marketplace.

The Commission must be vigilant in ensuring that local competition comes to fruition, rather than being taken in by the false need to provide “cover” for incumbent LECs just when those incumbent LECs are being forced to compete against less-established, start-up CLECs. Therefore, the Commission should not consider the *quid pro quo* that the SBC LECs’ petition appears to offer: provision of ADSL services in exchange for an exemption for those services from local competition obligations. There is no reason at all for the Commission to consider such a trade-off, particularly when there is no shortage in the availability of data services in the SBC LECs’ regions. A number of CLECs, including ICG, are already providing services, or soon will provide, similar to those the SBC LECs’ want to provide under a special regulatory arrangement. The presence of these competitively-provided data services in the SBC LECs’ backyard that will incent them to make ADSL services available without the need for any special treatment by the Commission.

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In the Matter of

Petition of Southwestern Bell Telephone Company,  
Pacific Bell and Nevada Bell for Relief from Barriers  
to Deployment of Advanced Telecommunications Services

CC Docket No. 98-91

**COMMENTS OF ICG TELECOM GROUP, INC.**

Pursuant to the Commission's Public Notice, DA 98-111, released June 11, 1998, ICG Telecom Group, Inc. ("ICG"), hereby respectfully submits its comments regarding Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell's ("SBC LECs") Petition for Relief from Barriers to Deployment of Advanced Telecommunications Services ("SBC LECs Petition")<sup>1</sup> in which the SBC LECs request that the Commission "forbear" from imposing any unbundling obligation applicable to asymmetrical digital subscriber line ("ADSL") facilities; dominant treatment of ADSL services; any obligation to provide a wholesale discount on ADSL service; and any MFN obligation as applicable to inconsistent agreements under Section 706, and forbearance under Section 10 for ADSL facilities and services.

ICG, as the largest "facilities-based" competitive local exchange carrier ("CLEC") that is not affiliated with a major interexchange carrier ("IXC"), has an interest in these

<sup>1</sup> Petition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell for Relief from Regulation Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-91 filed (June 9, 1998).

proceedings. ICG is a leading national CLEC with extensive fiber-optic networks. ICG offers local, long distance and enhanced telephony and data services in the states of California and Colorado, as well as the Ohio Valley and most of the Southeastern United States.

On January 22, 1998, ICG merged with NETCOM On-Line Communication Services, Inc. ("NETCOM"). NETCOM is one of the leading Internet services providers in the country, and as of December 31, 1997, was providing service to approximately 540,000 customers and over 12,000 professional businesses.

With regard to the SBC LECs, ICG is most familiar with the practices of Pacific Bell, because of ICG's interconnection with that LEC in California. ICG is also engaged in a joint venture with CSW Communications, Inc. called ChoiceCom, L.P. ("ChoiceCom"), which is familiar with the practices of Southwestern Bell in Texas.

\* \* \*

ICG maintains that the Commission must stand by the commitment to make local competition work, in accordance with the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). The Commission should not be taken in by proposals from the Regional Bell Operating Companies ("RBOCs") that would result in the diversion of resources from achieving local competition, a goal that will benefit all Americans, in favor of allowing the RBOCs to pursue their own profit-maximizing agendas.

In these comments, ICG demonstrates for the Commission the many local

competition tasks that remain undone by the SBC LECs. All of these problems must be cured, as is required by the Act, before the SBC LECs are permitted to devote a significant portion of their resources to fattening their corporate bottom line at the expense of measurable local competition. While ICG relates its experiences with the SBC LECs in a variety of specific situations, the Commission should not view these experiences as isolated incidents. ICG's significant concerns about the SBC LECs do not come down to any one or two of the many examples discussed herein. Instead, the cumulative effect of these examples demonstrate a woeful lack of commitment by the SBC LECs in meeting their responsibilities mandated by the Act. As the Texas Public Utility Commission ("Texas PUC") stated at the outset of its recent decision denying Southwestern Bell's Section 271 application, Southwestern Bell "needs to change its corporate attitude..."<sup>2</sup> Today, local competition in SBC's regions is barely stumbling along. If local competition is to flourish tomorrow, the Commission must not entertain proposals, such as that offered by the SBC LECs, that appear to be reasonable when viewed narrowly, but could well foreclose local competition when considered more broadly. The SBC LECs need to demonstrate a new commitment and a new attitude toward local competition before being allowed to move on to other business plans.

The SBC LECs argue that they are neither asking for complete deregulation of the technologies at issue in their request for relief, nor are they attempting to avoid their obligation to make bottleneck facilities available to their CLEC competitors. ICG

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<sup>2</sup> See Investigation of Southwestern Bell Telephone Company's Entry Into The Texas Inter-LATA Telecommunications Market, PUC Project No. 16251, Commission Recommendation (May 1998).



contends, however, that the SBC LECs' petition amounts to a naked move to avoid their duty of complying with the local competition requirements of Sections 251 in favor of pursuing the provision of highly profitable services. As the *fourth* RBOC to file a petition seeking Section 706 "relief," SBC and its RBOC allies have launched a full-court press against their local competition obligations under the law.<sup>3</sup> Further, the SBC LECs' petition is nothing short of a calculated attempt to shift the Commission's attention from ascertaining whether the SBC LECs are meeting their local competition obligations under the Act that are at the heart of the deregulatory, pro-competitive environment that Congress envisioned when it enacted the Act.

ICG maintains again that the Commission must continue to use all available resources to pry open the local RBOC monopoly. One tool the Commission should not hesitate to use in ensuring that local competition is achieved, consistent with the terms of the statute, *before* the RBOCs are able to pursue their profit-maximizing agenda. In simple terms, the Act specifies each RBOC's in-region obligations with respect to interconnection, unbundling, and resale. The Act further provides that an RBOC that fulfills these obligations correctly may focus on other concerns, including the provision of in-region interLATA service.<sup>4</sup> The scope of the RBOCs' obligations is clear and unambiguous — the

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<sup>3</sup> ICG has previously filed comments opposing petitions for similar relief filed by US West and Ameritech.

<sup>4</sup> Although the SBC LECs claim that they are not seeking forbearance of Section 271's restrictions on the interLATA provision of service, the relief the SBC LECs actually request would serve as a "first step" toward to the provision of interLATA service.

RBOCs must open their in-region doors to local competition by facilitating interconnection, allowing resale, and offering unbundled network elements (“UNEs”).

As documented below, however, the SBC LECs have not yet even come close to fulfilling their local competition obligations under the Act as a condition precedent to emphasizing the provision of highly profitable services. Given this reality, there is no possible way that the SBC LECs should receive the relief they have requested. At best, SBC LECs should be sent back to their regions with instructions to fulfill all of their local competition obligations immediately. Only then will the Commission have a sufficient sense of the SBC LECs’ conduct in this regard to evaluate whether their word is good when they promise to take certain actions in return for special “relief.”

Even in their pursuit of Section 271 relief at the state level, the SBC LECs have been opponents of competition. In Southwestern Bell’s recent Section 271 application before the Texas PUC, one commissioner remarked that Southwestern Bell appears to be resisting competition, rather than adjusting to the competitive environment that the Act envisions: “To date, SWB has been a reluctant participant in opening the local telecommunication market to competitors.”<sup>5</sup>

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<sup>5</sup> Statement of Commissioner Judy Walsh, Public Utility Commission of Texas, Docket No. 16251, Investigation into Southwestern Bell Telephone Company’s Entry Into In-Region InterLATA Services Under Section 271 of the Telecommunications Act of 1996, May 21, 1998. See also Statement of Commissioner Patricia A. Curran: “[Southwestern Bell] can demonstrate good faith by removing barriers that it has put in place and by its commitment to institutionalize clear and nondiscriminatory procedures to allow CLECs entry into the market and to sustain new customer relationships.”

The SBC LECs would obviously prefer to maximize profits at the expense of their would-be competitors and their potential customers. Given their consistent inability to meet the requirements of Section 251, whether intentional or not, the SBC LECs should not be permitted to divert their energy, capital, and other resources to new projects, such as those outlined in their petition. As the Commission well knows, and the RBOCs would likely agree, a carrier has only a finite supply of energy and resources available to it. It is axiomatic that any expenditure of resources on any business plan necessarily drains resources from other tasks to be done. Therefore, any devotion of energy and resources by SBC in focusing on the provision of ADSL services will lessen the energy and resources necessary to carry out the SBC LECs' local competition obligations under the Act. Because SBC's energy and resources are finite, the SBC LECs' petition for Section 706 "relief," which seemingly concerns other issues, is highly relevant to the future of local competition in SBC's regions. In simple, straightforward terms, the SBC LECs must do what the law requires before proceeding to other energy-and-resource-diverting projects. For these reasons, ICG urges the Commission to deny the SBC LECs' petition.

Recently, on May 27, 1998, the Association for Local Telecommunications Services ("ALTS") petitioned the Commission to issue a declaratory ruling and take related actions to achieve the full implementation of Sections 251 and 252 of the Act, which it contended is the single most important means of promoting the introduction of advanced telecommunications services to the American people.<sup>6</sup> The ALTS Petition demonstrates at

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<sup>6</sup> Petition of the Association for Local Telecommunications Services (ALTS) For A Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of

length that it is the CLECs that are working to meet customers' needs for advanced data services and, thus, beginning to fulfill some of the promise of the Act. The RBOCs, on the other hand, have concentrated their efforts on trying to preclude local competition – through delays, service failures, and bureaucratic run-arounds.

The ALTS Petition documents the specific problems that CLECs have encountered from all five RBOCs in deploying advanced data technologies. The SBC LECs are cited throughout the ALTS Petition for impeding deployment by their local competitors of these technologies. For example, to hinder interconnection for data services, SBC has argued that its 56 kbps data service is an access service, rather than an exchange service, and contends that this somehow insulates it from providing 56 kbps data loops as UNEs.<sup>7</sup> SBC has also claimed that existing interconnection agreements do not cover DSL functionality.<sup>8</sup> In addition, ALTS has shown that SBC has taken an unreasonable position on collocation, often requiring construction of facilities outside of SBC offices to achieve even virtual collocation.<sup>9</sup> ALTS also specifically refers to SBC as an RBOC that is using litigation and the uncertainty litigation creates to delay implementation of the local competition provisions of the Act.<sup>10</sup> The ALTS Petition, therefore, provides additional evidence that

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Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996 (filed May 27, 1998).

<sup>7</sup> ALTS Petition at 14.

<sup>8</sup> Id. at 16.

<sup>9</sup> Id. at 19.

<sup>10</sup> Id. at 27-28.

the SBC LECs have not reached a position in their dealings with local competitors to warrant consideration of the “relief” that they request in their petition.<sup>11</sup>

**I. THE SBC LECs HAVE NOT MET THE PREREQUISITES TO  
RECEIVE THE RELIEF THAT THEY REQUEST**

To keep the focus on the local competition that the Act requires, ICG points out a significant number of specific steps that the SBC LECs should take — *are required to take* — before the Commission should consider any petition for relaxation of the rules to which the RBOCs are required to adhere. The SBC LECs’ failure to comply with many of the statutory requirements has been pointed out previously and repeatedly by those, including ICG, with first-hand experience with the SBC LECs’ practices (or lack thereof, as the case may be). ICG associates itself with the comments of other parties that make legal and policy arguments about why it is inappropriate to grant the SBC LECs the relief they request. For its part, ICG recites here the specific details of its own experiences with Pacific Bell’s shortcomings in California, as well as the experience of ChoiceCom, ICG’s joint venture partner in Texas, to underscore the lack of progress and foot dragging with which would-be competitors continue to meet. The SBC LECs have a long history of problematic service that ICG has experienced first hand.

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<sup>11</sup> The Commission should not hesitate to take notice of other proceedings, particularly those at the state commissions, that pertain to the SBC LECs conduct in meeting their local competition obligations. For example, in rejecting Southwestern Bell’s Section 271 application, the Texas PUC found Southwestern Bell’s commitment lacking with regard to meeting the requirements of Sections 251 and 252. See Investigation of Southwestern Bell Telephone Company’s Entry Into The Texas Inter-LATA Telecommunications Market, PUC Project No. 16251, Commission Recommendation (May 1998).

Pacific Bell, in particular, still has numerous problems and issues that must be corrected and addressed before self-sustaining competition will develop and continue to exist. It is premature to grant Pacific Bell or any of the SBC LECs the relief they seek. For example, Pacific Bell often claims its resale support structures and systems gives competitive local exchange carriers (“CLECs”) such as ICG performance standards and service intervals that are equivalent to Pacific Bell’s own when in fact Pacific Bell does not. Pacific Bell often states in public policy presentations that the company has standardized and high quality intervals, systems, and practices, yet when a check is made to see whether Pacific Bell is in fact achieving results as promised, one discovers, as the ensuing discussion shows, that the results are vastly different and of lower quality. Pacific Bell promises one thing, delivers another, and publicly promotes what was promised, not what was achieved.

If the CLEC industry is to grow and survive, the Commission must deny the request for relief from regulation. In their petition, the SBC LECs state that “[i]n many areas, the relevant SBC LEC will be faced with at least one actual competitor.”<sup>12</sup> Such a heavily qualified statement that the SBC LECs face, perhaps, *only one* competitor in *many* areas, should be taken by the Commission as a concession that local competition today is, at best, slight and limited to specific areas. The Commission should be even more concerned about what the future of local competition in SBC’s regions.<sup>13</sup> For the following specific

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<sup>12</sup> SBC Petition at 31.

<sup>13</sup> SBC’s use of the future tense in stating that it “will be faced with at least one competitor . . .” casts further doubt on the state of local competition today in SBC’s regions.

reasons, it is clear that the SBC LECs are woefully short of meeting their claims that they support competition.

### **Collocation Procedures**

Physical collocation, which is essential for establishing interconnection to Pacific Bell, is a significant area where Pacific Bell continues to thwart competition. Because collocation issues figure so prominently in the SBC LECs' petition, the Commission should expect nothing less than an extraordinary showing by the SBC LECs that they have gone the extra mile to satisfy regulatory and customer concerns about collocation. Unfortunately, this has not been ICG's experience with the SBC LECs.

Upon receiving application requests for physical collocation from CLECs, Pacific Bell has been routinely denying these applications due to its claim of "no space." For example, ICG applied for three physical collocation spots in northern California on September 25, 1997. Six months later, on March 17, 1998, Pacific Bell denied physical collocation without providing information or any evidence to either ICG or the state commission that the space was unavailable.<sup>14</sup>

The situation was so bad that at one point ICG and other facilities-based carriers were forced to file a February 24, 1998 Motion to Establish Collocation Procedures with the California PUC.<sup>15</sup> Pacific Bell vigorously opposed the motion.<sup>16</sup> However, on the eve

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<sup>14</sup> Letter from Laura Mendoza, Pacific Bell to Bill Walia, March 17, 1998.

<sup>15</sup> Motion to Establish Collocation Procedures filed by the Facilities Based Carrier Coalition, R.95-04-043, filed February 24, 1998. the Facilities Board Carrier Coalition

of filing its Section 271 application with the California Public Utilities Commission ("CPUC"), Pacific Bell suddenly "found" collocation space for CLECs in a large majority of central offices where it had previously claimed there was no space.<sup>17</sup> On May 14, 1998, PacBell announced it had revised the previously denied physical collocation requests and found space for them.<sup>18</sup> More specifically, Pacific Bell had originally claimed that 82 central offices had no physical collocation space. Pacific Bell subsequently "found" collocation space in 56 of these central offices.

ICG's joint venture ChoiceCom has faced similar collocation problems in Texas. In particular, Southwestern Bell has been delinquent in refunding, pursuant to the terms of ChoiceCom's interconnection agreement, the amounts Southwestern Bell collected for collocation fees that were in excess of the fees ultimately tariffed at the Texas PUC. Although the interconnection agreement provides for an automatic true-up of the overpaid amounts, Southwestern Bell has yet to pay ChoiceCom a refund in excess of \$522,000, which has been due for three months, since March 27, 1998. That balance is still unpaid

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includes ICG Telecom Group, NEXTLINK California, LLC, NorthPoint Communications and Teleport Communications Group.

<sup>16</sup> Comments of Pacific Bell on Motion to Establish Collocation Procedures, R.95-04-043, filed March 10, 1998.

<sup>17</sup> In addition to physical collocation, Pacific Bell has also dragged its feet in providing other forms of collocation, such as cageless collocation, which would have facilitated quicker provisioning of services. In addition, Pacific Bell has an unproven track record in providing virtual collocation whenever physical collocation has not been available.

<sup>18</sup> Letter from Pacific Bell Collocation Services to ICG, April 24, 1998.



several months after it became due. In sum, ICG contends that the SBC LECs have used the availability of collocation space to impede local competition.

### **Pacific Bell Operational Support Systems Issues**

Pacific Bell claims in filings before the California PUC that it is not required to provide Operational Support System (OSS) access, response time, and general system parity between itself and CLECs.<sup>19</sup> Although Pacific Bell is proposing “new” OSS support structures that it claims will better service CLECs,<sup>20</sup> Pacific Bell has not yet tested the new systems with all CLECs, nor trained system users. In addition, the new systems have not been tested in a real-time environment using the daily loads and demands put upon such systems by CLECs. Moreover, Pacific Bell has yet to identify the costs associated with the “new” OSS system, although it has announced its intention to charge prices that are not cost-based. As such, Pacific Bell’s claims about its “new” OSS access are speculative at best. Based on ICG’s experience with Pacific Bell, it is clear that Pacific Bell has quite a ways to go building “new” OSS systems that will better support the needs of local exchange resellers over facilities-based providers.<sup>21</sup> ChoiceCom has reported similar OSS-related difficulties with Southwestern Bell in Texas.

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<sup>19</sup> Pacific Bell’s Comments on the Proposed Interim Rules for OSS Performance Measures, R. 97 10-016 (November 20, 1997) at 5-7.

<sup>20</sup> Id. at 1-2.

<sup>21</sup> California Public Utilities Commission Order Instituting Investigation on the Commission’s Own Motion Into Monitoring Performance Of Operations Support Systems – R.97-10-016/I.97-10-017.

### **Resale Service Issues**

Another crucial area in which Pacific Bell consistently falls short is the provision of resale of Pacific Bell local exchange services to CLECs. Pacific Bell, whether by deliberate design or incompetence, makes it as difficult as possible to resell their local exchange service. In June 1997, Pacific Bell impermissibly changed an ICG business local exchange resale customer in Bakersfield from ICG back to Pacific Bell without the customer ever requesting the change back, either through a letter of authorization or otherwise. In fact, Pacific Bell attempted to keep the customer on Pacific Bell's local exchange service by crediting the customer's Pacific Bell account for non-recurring charges associated with the change back to Pacific Bell business line service. To return the customer to ICG, as was appropriate, ICG was forced to produce a signed letter from the customer in question and contact Pacific Bell's senior executive management directly. ICG was also forced to re-execute automated service requests for a customer it never lost. Even after Pacific Bell corrected its improper change and returned the customer back to ICG, Pacific Bell improperly assessed ICG non-recurring change-over charges associated with returning the customer to its carrier of choice. ICG again had to conduct a lengthy battle with Pacific Bell to have the second set of nonrecurring charges removed.

In another instance, Pacific Bell traditionally allowed its customers volume discounts. However, Pacific Bell refused to provide this option to its resale customers. AT&T filed suit against Pacific Bell and the California PUC (for upholding Pacific Bell's practices) in an arbitration context in the United States District Court for the Northern

District of California.<sup>22</sup> AT&T prevailed on May 11, 1998, and Pacific Bell was required to offer aggregation discounts without discrimination.<sup>23</sup> After losing the court battle, however, Pacific Bell filed an advice letter five weeks later, on June 18, 1998, with the California PUC that *withdrew* all volume discounts resulting from aggregation of traffic.<sup>24</sup> Such a withdrawal illustrates the lengths to which Pacific Bell will go to handicap resellers of Pacific Bell's service.

Pacific Bell also remains unwilling to provide number retention when changing customers from Centrex service to business line local exchange service. In November 1997, the State of California Franchise Tax Board, which ICG had as a customer, cancelled its contract with ICG because Pacific Bell had refused to allow the Franchise Tax Board to retain the telephone numbers associated with 72 lines.<sup>25</sup> There is no technical reason for Pacific Bell to enforce this policy.

Having customers switched back to Pacific Bell after they choose ICG, or removing the volume discount, are particularly egregious examples of Pacific Bell's poor service record, but there are more routine problems which demonstrate Pacific Bell's level of commitment to "competition." For example, Pacific Bell frequently cuts off all local exchange service when migrating customers from Pacific Bell to ICG, as it did in July 1997

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<sup>22</sup> AT&T Communications of California, Inc. v. Pacific Bell, No. C 97-0080 SI, (N.D. Ca. 1998).

<sup>23</sup> Id., at 22.

<sup>24</sup> Pacific Bell Advice Letter No. 19495, June 18, 1998.

to a manufacturing business customer with multiple locations in Los Angeles. This misconduct by Pacific Bell caused the customer to terminate ICG's service. Generally, service outage times for these customers average from four hours to 24 hours or longer.<sup>26</sup> Pacific Bell's inattention to resale service issues is costing ICG customers that it has worked hard to win. In addition, Pacific Bell's consistently poor OSS service has caused customers of ICG to form a poor image of ICG even though ICG is reselling Pacific Bell service.

Pacific Bell also has frequent resale service policy and points of contact changes that confuse and mislead, cause service provisioning and installation delays, and are often unfair and unnecessary. Throughout December 1997 and January 1998, in particular, it appeared to ICG that Pacific Bell was making changes to its bureaucratic procedures almost daily. ICG was never informed about these changes beforehand, but was told what it had done "wrong" after its requests for service orders were "rejected" by Pacific Bell. ICG, in effect, is held hostage to the whims of Pacific Bell as the incumbent LEC needlessly changes its operating procedures and policies.

### **Number Portability Issues**

As the Commission knows, the statutory requirement that LECs provide number portability, as set forth in Section 251 of the Act, is an essential element for establishing local competition. In this area, Pacific Bell again appears to do everything it can to make

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<sup>25</sup> Letter from Franchise Tax Board for State of California to ICG, November 24, 1997.

<sup>26</sup> See also "Number Portability Issues" directly below.

competition unworkable. For several weeks in late 1997 and early 1998, Pacific Bell was, with extreme frequency, incorrectly implementing directed number call forward (“DNCF”) when converting resale business line customers from Pacific Bell service to ICG service. Pacific Bell consistently disconnected the customers old telephone number long before implementing the new ICG telephone number, thus leaving the customer without telephone service. At least four ICG customers, and likely many more, were disconnected by Pacific Bell, which led some of the customers to terminate ICG’s service. At other times, Pacific Bell provides a wrong new phone number on number change announcements.

ChoiceCom has experienced similar problems with number portability in Texas. For example, in April 1998, one of ChoiceCom’s new customers was cut off from service by Southwestern Bell when transferring the customer’s telephone numbers to ChoiceCom’s service. A ChoiceCom employee immediately called Southwestern Bell’s customer service number, only to be put on hold repeatedly for 30 minutes. Southwestern Bell determined that the disconnection was the result of its error and subsequently completed the number portability correctly. Still, the mistake by Southwestern Bell ultimately reflects badly on ChoiceCom. The number portability situation has improved somewhat, but only because the Texas PUC began to consider Southwestern Bell’s Section 271 application.

SBC LECs’ actions and inaction with regard to number portability — either alone or in combination — have the effect of leading customers to believe that ICG cannot deliver the service requested, and that the service received by the customer from ICG is

poor. SBC LECs' tactics have tended to encourage customers to stay with the "old reliable local phone company," on the theory that dealing with the CLEC is more trouble than it is worth. This clearly has the effect of discouraging the growth of local competition.

### **Directory Assistance Issues**

Pacific Bell, with a great degree of consistency, provides incorrect, late, and/or missing directory assistance listings on business line resale services. Business customers, in particular, have become concerned that their customers will not be able to find them, especially if the business has a new phone number and the directory listing is incorrect or incomplete.

In one instance in September 1997, a travel agency that is a customer of ICG learned that Pacific Bell's directory assistance was giving out a wrong telephone number for the travel agency's office. Pacific Bell received notification of the problem from ICG on September 25, 1997. When the wrong number still had not been corrected as of September 29, 1997, an ICG employee called Pacific Bell to have the matter addressed. Although the ICG employee was told by the Pacific Bell business office representative that a supervisor needed to take the call, no supervisor ever came on the line, nor would the Pacific Bell representative place the next level supervisor on the phone. Instead, the ICG employee was on the line in a single call that lasted *one hour, 37 minutes, and 38 seconds* until the Pacific Bell representative informed the ICG employee that Pacific Bell had to "release the line." At no point during this 97-minute period did the ICG employee reach the appropriate person at Pacific Bell and have the directory assistance problem addressed.

In another example, a travel agency customer (different than the one in the preceding example) gave ICG advance notice of its move to a new location. On March 28, 1997, Pacific Bell, which requires three business days to process an order, was told of this impending changes by an ICG employee, with a request to expedite the order if possible. The order was scheduled to be acted upon by April 1, 1999, three business days later. The travel agency's phone service was not working, however, until April 4. Pacific Bell simply claimed that its orders were backlogged. To keep its customer happy after Pacific Bell's fumbling of the service order, ICG was forced to cover certain charges that the customer incurred as a result of the service outage.

Directory assistance listings in California have improved recently, but only with the filing of Pacific Bell's Section 271 draft application in California. In Texas, Southwestern Bell failed to list directory information pertaining to ChoiceCom in the front portion of the Corpus Christi telephone directory, although Southwestern Bell later agreed to compensate ChoiceCom for this error.<sup>27</sup>

### **Interconnection and Service Provisioning Issues**

Pacific Bell has not created the necessary procedures and processes for integrating ICG forecasted needs into the Pacific Bell network growth plans, thus harming ICG's image. For example, Pacific Bell was unable to fulfill trunk capacity requests forecasted by

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<sup>27</sup> Pacific Bell subsequently agreed to provide ChoiceCom with additional space in the next year's directory.

ICG to Pacific Bell in the third and fourth quarters of 1997.<sup>28</sup> As a result, ICG end-user customers were not able to complete calls due to inadequate trunk capacity and received instead all-trunks-busy announcements (“All circuits are busy – please try your call again later”). In other instances, because Pacific Bell has been too slow in deploying tandem switches, ICG is forced to interconnect with Pacific Bell’s network through less efficient, more expensive means. To complicate the picture further, ICG trunk requests placed in third quarter 1997 will not be fulfilled by Pacific Bell until December 1998 – *about fifteen months later*. This has created a poor image of ICG and of other CLECs to customers and the general public. More importantly, as a result of Pacific Bell’s sluggishness, ICG has been handicapped in continuing to serve existing customers as the customers themselves grow.

Pacific Bell also has inconsistent service order provisioning intervals. For example, on resale service orders, “Firm Order Confirmations” often are processed faster than “Expedite Request Confirmations.”<sup>29</sup> In addition, Pacific Bell often misses due dates by anywhere from a couple of days to almost a full month as it did repeatedly for an ICG customer, the San Diego Community College, in January 1998. These due dates often concern expediting services to end-user customers as well as installing the interconnecting network trunks (“interconnection trunks”) needed to process calls between the Pacific Bell

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<sup>28</sup> As documentation, ICG has a series of ASR trunk requests and corresponding confirmations from Pacific Bell.

<sup>29</sup> In January 1998, an ICG employee reported that “Firm Order Confirmations” were being completed in two days, while “Expedite Request Confirmations” were taking several days.



and ICG networks. Missed due dates have been particularly evident when ICG service requests must be coordinated between Pacific Bell and GTE California.

ChoiceCom has also contended with significant delays in service provisioning. In one recent examples, ChoiceCom's order for a Primary Rate Interface ("PRI") was placed on May 11, 1998, but not processed and installed until June 10, 1998, and then only after a series of telephone calls and faxes by ChoiceCom to break Southwestern Bell's bureaucratic logjam. In particular, Southwestern Bell took from May 11 through May 28 just to refer ChoiceCom to the correct department and to send the order forms, despite the fact that the ChoiceCom representative was in contact with Southwestern Bell throughout this period.

Interconnection and service provisioning are at the heart of enabling competition. The Commission should not agree to any proposal that would divert resources and energy from the core task of implementing such interconnection and service provisioning. The SBC LECs' pace on interconnection and service provisioning for ICG has been sluggish, to say the least. The Commission can expect this situation to worsen if the SBC LECs are allowed to divert their resources and energy into carrying out the profit-maximizing agenda outlined in the SBC LECs' petition instead of implementing the Act.

### **Misleading Public Information**

Pacific Bell claims local exchange competition exists and that telecommunications markets are fully open. Nevertheless, Pacific Bell, which has over 17 million lines, has lost